

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 399 of 2011**

1. Madwari Ram Uraon, S/o Somaru Ram uraon, aged about 28 years, Caste Uraon, Occupation Agriculturist, R/o village Silsila (Implipara), Police Station Batholi, District Sarguja (C.G.)

---- Appellant

**Versus**

1. State of Chhattisgarh, Through : the Police Station Batholi, District Sarguja (C.G.)

---- Respondent

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| For Appellant<br>appellant | : | Mr. Jitendra Shrivastava, Advocate appointed by the<br>and Mrs. Smriti Shrivastava, Advocate appointed by<br>the High Court Legal Aid Committee, vide order dated<br>16.04.2015. |
| For Respondent             | : | Mr. Mahesh Mishra, P.L.                                                                                                                                                          |

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**Hon'ble Shri Justice T. P. Sharma**  
**Hon'ble Shri Justice Inder Singh Uboweja**

**Judgment on Board by T.P.Sharma, J.****08/05/2015**

Challenge in this appeal is to the judgment of conviction dated 19<sup>th</sup> April, 2011 passed by the Sessions Judge, Surguja (Ambikapur), in Sessions Trial No. 51/2010 whereby and whereunder after holding the appellant guilty for causing homicidal death amounting to murder of Dugur Sai, the trial Court convicted the appellant under Section 302 of the I.P.C. and sentenced to imprisonment for life with fine of Rs.2000/- and in default to undergo additional RI for six months.

2. Conviction of the appellant is impugned on the ground that without there being any iota of evidence against him the trial Court convicted and sentenced the appellant and thereby committed illegality.

3. As per the case of the prosecution, on 10.08.2009 at about 10.30 pm, the

appellant was present in the shop of deceased Dugur Sai and he was making hindrances in the activities of deceased Dugur Sai whereupon deceased came to the house of P.W.3 Rajesh and informed him about the nuisance being created by the appellant. On hearing this, P.W.3 Rajesh along with deceased went towards the shop where the appellant assaulted Dugur Sai by rod and caused fatal injury, due to which, deceased fell down. P.W.3 Rajesh and other persons called the vehicle and brought the injured (Dugur Sai) to the Hospital. They noticed at village Askala that Dugur Sai died. Thereafter P.W.1 Basant Ram went to Police Station Batholi and lodged F.I.R. vide Ex.P.1. Merg was recorded vide Ex.P.2.

4. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P.4, inquest over the dead body was prepared vide Ex.P.5. Spot map was prepared vide Ex.P.3. Bloodstained and plain soils and iron rod were picked up vide Ex.P.8. Patwari prepared spot map vide Ex.P.9. Dead body was sent for autopsy to Community Health Center, Batholi, vide Ex.P.11-A. Dr. Manorama Minj (P.W.5) conducted autopsy vide Ex.P.11 and found following injuries:

- i. Abrasion of 3 x 2 cm over right knee anterior aspect.
- ii. Lacerated wounds over right eye brow horizontal (a) medial 2 x 1 x 1 cm.  
(b) lateral 2 cm x 1 x 0.5 cm.
- iii. Lacerated wound over right side of forehead horizontal size of 2 x 1 x 0.5 cm.
- iv. Lacerated wound over left side of parietal region and occipital region horizontally of 4 x 2 x 1 cm.
- v. Blackening over both upper eyelids.
- vi. On dissection, subphosteal clots were present of injury No.4, linear fracture of length 15 cm. from left side of occipital bone to posterior aspect of left parietal bone, subdural blood clot of size 18 cm. In diameter present

over left parietal and occipital region.

Mode of death was coma due to head injury and death was homicidal in nature.

5. Seized articles were sent for chemical examination to F.S.L. vide Ex.P.17 and as per report of F.S.L. Ex.P.19 rod was stained with blood.
6. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').
7. After completion of investigation charge sheet was filed before the Court of J.M.F.C. Sitapur, who in turn committed the case to the Court of Sessions Surguja at Ambikapur.
8. In order to prove the guilt of the appellant, prosecution examined as many as 9 witnesses. Accused person was examined under Section 313 of the Code wherein he denied the circumstances appearing against him and innocence and false implication is claimed. The appellant also examined one Shrawan Tripathi as D.W.1 and tried to show that there was enmity and dispute between deceased and P.W.3 Rajesh.
9. After providing an opportunity of hearing to the parties, learned Sessions Judge has convicted and sentenced the appellant as aforementioned.
10. We have heard learned counsel for the parties and perused the record of the trial Court including judgment impugned.
11. Mr. Jitendra Shrivastava and Mrs. Smriti Shrivastava, learned counsel for the appellant, vehemently argued that conviction of the appellant is substantially based on the P.W.3 Rajesh whose evidence does not inspire confidence and trustworthy. Even otherwise, as per his specific evidence, the appellant was making hindrances in the shop of deceased, then deceased came to the house of P.W.3 Rajesh and called this witness and while they were going towards the shop then they saw the appellant going to his house whereupon deceased stopped, chased and caught hold the appellant,

thereafter the incident took place, which clearly revealed that the appellant has caused injury when he was caught hold by the deceased and was having apprehension that deceased may cause injury to him. Therefore, if the case of the prosecution is admitted in its face value, then even the act attributed to the appellant does not travel beyond the scope of Section 304 part II of the I.P.C.

12. On the other hand, Mr. Roshan Dubey, learned counsel for the State opposed the appeal while submitting that conviction of the appellant is based on P.W.3 Rajesh whose evidence is sufficient for proving the guilt of the appellant.

13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution. In the present case, homicidal death as a result of fatal injuries found over the body of deceased Dugur Sai is not only substantially disputed on behalf of the appellant, but, on the other hand also established by the evidence of P.W.1 Basant Ram, P.W.3 Rajesh, F.I.R. Ex.P.1, P.W. 5 Dr. Manoraja Minj and autopsy report Ex.P.11 and death of deceased was homicidal in nature.

14. As regards complicity of the appellant in crime in question, the conviction of the appellant is substantially based on the evidence of P.W.3 Rajesh. He was present in his house at 10.30 pm and at the same time the deceased – Dugur Sai came to his house and informed that appellant was creating nuisance and hindrances and was quarrelling with him, then this witness accompanied Dugur Sai upto the shop of deceased. When they reached near the shop of Dugur Sai then they saw that the appellant left the shop of Dugur Sai and was going to his house and when he was at the distance of 100 meters away from the shop of deceased, then the deceased stopped, chased and caught hold the appellant, then the appellant caused injury to the deceased by some rod. P.W.3 Rajesh informed the persons, who took the injured to the Hospital where the deceased died on the way. Defence has cross-examined this witness at length. In his cross-examination at para 10, this witness admitted that appellant was going towards his house and he was silent, then Dugur Sai called, chased and caught hold of the

appellant. Evidence of P.W.3 clearly revealed that appellant was quarreling with deceased who called Rajesh (P.W.3) and when the deceased and P.W.3 Rajesh reached to the shop of deceased, the appellant did not quarrel, inter alia, he was going towards his house and he did not call the deceased, in turn deceased stopped, chased and caught hold of the appellant. Thereafter, the appellant assaulted deceased by rod which shows that after completion of part of incident, appellant was caught hold by the deceased then with an apprehension he caused the injury to the deceased by rod, as a result of which, deceased died due to bad effect of injury. The part played by the appellant clearly revealed that when he was caught hold by the deceased then the appellant applied force and caused fatal injury leading to death of deceased. This shows that the appellant did not cause homicidal death with intent to cause his death but at the same time when the appellant caused injury the appellant was not having any knowledge that by his act the deceased may die. Therefore, the act attributed to the appellant squarely falls within the purview of Section 304 Part II of the I.P.C. and not under Section 302 of the I.P.C.

15. While convicting the appellant under Section 302 of the I.P.C. the Court below did not consider the above facts and thereby committed illegality.

17. Consequently, appeal is partly allowed. Conviction of the appellant under Section 302 of the I.P.C. is hereby altered to Section 304 Part II of the I.P.C. and he is sentenced to RI for 7 years. Appellant is in custody since 11.08.2009. He is entitled for set off the period of detention already undergone by him.

(T.P.Sharma)  
JUDGE

(I.S.Uboweja)  
JUDGE